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EXAMINER

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/829,393	Applicant(s) MCHENRY ET AL.	
	Examiner Nicholas D. Rosen	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-32 and 34 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-22 and 34

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over the anonymous article, "Ford Issues Car Care Alert," hereinafter "Ford," in view of Osborn et al. (U.S. Patent 6,182,048). As per claim 1, "Ford" discloses (c) providing a motor oil having recommended, or user desired enhancements (three paragraphs beginning from, "(4) Use the proper engine oil") based on (a) data including type

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information about the motor vehicle in which the engine oil is to be utilized sufficient to identify a user's requirements (ibid). "Ford" does not disclose analyzing the data by computer, but Osborn teaches analyzing motor vehicle related information by computer (column 3, line 27, through column 6, line 35). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to analyze the data by computer, and provide an engine oil responsive to the data analysis, for the obvious advantage of using a computer for calculations that may be difficult or time-consuming for human beings to perform, e.g., involving multivariate linear regression, as taught in Osborn, to provide a motor oil selected on the basis of numerous factors.

As per claim 2, "Ford" discloses basing a decision on type of vehicle, and selecting a lubricant as recommended based on the type of vehicle (three paragraphs beginning from, "(4) Use the proper engine oil").

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford" and Osborn as applied to claim 1 above, and further in view of Wilkinson ("Understanding What's in Your Car's Motor Oil"). Osborn teaches computer analysis based on expected ambient temperatures (column 5, line 61, through column 6, line 35), and Wilkinson teaches that the advantages of a motor oil depend on ambient temperatures (paragraphs beginning "There are still some backyard chemists" and "The problem? Price."). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to practice (a) to input at least one of expected ambient temperatures, average driving distance, normal type of

driving, and interest in fuel economy, cold weather starting, and engine longevity, for the obvious advantage of providing an engine oil suited to a particular user's needs.

Claims 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford" and Osborne as applied to claim 1 above, and further in view of Klepacki ("Reflect to Mirror Users"). As per claim 4, the different engine oils in "Ford" can be regarded as customized for different circumstances of use, and it is well known to make custom blends of mixed materials, as taught, for example, by Klepacki (especially paragraph beginning, "Unlike most beauty e-commerce sites," and the paragraph thereafter; see also remainder of Klepacki article for obtaining input from users, etc.). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for (a)-(c) to be practiced to design, produce, and deliver or make available a customized engine oil, for the obvious advantage (analogous to the advantage achieved in Klepacki) of customizing the oil to best suit a particular user.

As **per claim 5** (depending on claim 1), and as **per claim 6** (depending on claim 4), Klepacki teaches displaying a questionnaire on a computer screen connected to a global computer network and prompting a user to input information into the questionnaire (three paragraphs beginning from "The degree of customization to be offered"; the computer screen as such being implied by the Web-based questionnaire).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford," Osborn, and Klepacki as applied to claim 6 above, and further in view of official notice. "Ford" does not disclose displaying on the computer screen indicia indicating the ability

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of the user to order other automotive products, but official notice is taken that it is well known to display advertising indicia on computer screens. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to display displaying on the computer screen indicia indicating the ability of the user to order other automotive products, for the obvious advantage of profiting from the sale of automotive products to persons likely to be interested in buying them.

Claims 8-12, 14, 15, 16, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford," Osborn, and Klepacki as applied to claim 4 above, and further in view of Denis et al. (U.S. Patent 4,954,273). As per claims 8-12, "Ford" is not explicit about the composition of the lubes, but Denis teaches a customized motor oil containing about 86.24 percent of a baseline motor oil, and at least one of a fuel economy additive, an antiwear additive, a detergent additive, a dispersant additive, a corrosion inhibitor, an antioxidant, a pour point depressant, or a blend stability additive (Fully Formed Example III, column 13, lines 46-68). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (c) to provide a baseline motor oil of from about 50, 60, 75, or 80 percent to 99.9 percent of the final customized engine oil, and at least one of the listed additives, for the obvious advantages of producing increased fuel economy, reduced wear, etc.

As per claim 14, Denis teaches providing an absolute increase of from about 0.1-10% in at least one selected from the group consisting of fuel economy additives, antiwear additives, detergent additives, dispersant additives, oxidation control additives,

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corrosion inhibitors, pour point depressants, and blend stability additives (Fully Formed Example III, column 13, lines 46-68). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (c) to add additives as listed, for the obvious advantages of producing increased fuel economy, reduced wear, etc.

As per claim 15, Denis teaches providing additives leading to at least two or more enhanced features selected from enhanced wear protection, enhanced fuel economy, enhanced detergency, enhanced dispersancy, enhanced low temperature startability, enhanced high temperature viscosity, extended drain capability, enhanced wear protection, corrosion protection, enhanced control of oxidation and enhanced blend stability (Fully Formed Example III, column 13, lines 46-68). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (c) to add additives leading to at least two or more of the listed enhanced features, for the obvious advantages of producing increased fuel economy, reduced wear, etc.

As per claim 16, likewise, Denis teaches adding additives leading to at least three of said enhanced features, making claim 16 obvious on the same grounds as claim 15.

As per claim 21, Denis does not expressly disclose that (c) is practiced to change at least one of detergent and dispersant concentration levels over the range from about -50% to about +200% compared to their concentration levels in a quality baseline motor oil, but does teach that "a basic nitrogen containing dispersant" can vary from 1 to 15

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weight percent, and “a detergent in the form of an overbased calcium sulfonate” from 0.2 to 3 weight percent (General Formulated Example, column 13, lines 1-21). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant’s invention to practice (c) to change at least one of detergent and dispersant concentration levels over the range from about –50% to about +200% compared to their concentration levels in a quality baseline motor oil, for the obvious advantage of producing a customized engine oil having desired properties.

As per claim 22, Denis discloses variations in both detergent and dispersant levels, as noted above in regard to claim 21.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over “Ford,” Osborn, Klepacki, and Denis as applied to claims 8-12 above, and further in view of official notice. Neither “Ford” nor Denis discloses that (c) is practiced to provide about 0.1-100% percent improvement in at least one of fuel economy, wear performance, detergent performance, dispersant performance, oxidation protection, corrosion protection, low temperature performance and blend stability, but Denis does teach adding additives to improve these characteristics, as set forth above. The reasonable presumption is that one would not go to the trouble of attempting to determine optimal quantities of various additives, and the expense of adding these additives, as taught in Denis and other art of record, unless these additives produced a non-trivial improvement in the properties that they were intended to improve. Indeed, one would hardly identify a chemical as, for example, an antiwear additive unless its effects on preventing wear were detectable without extreme effort, implying an improvement

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greater than 0.1%. Official notice is taken that the effects of many additives are, within a range, dependent on concentration, so that, even if the improvement were over 100% under some circumstances, a lower concentration would produce an improvement of less than 100% -- and, indeed, it might be that no concentration of an additive would improve performance by more than 100% over a baseline oil. Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (c) to provide about 0.1-100% improvement in at least one of the listed characteristics, as an obvious consequence of adding desirable additives as taught by Denis.

Claims 17, 18, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford," Osborn, Klepacki, and Denis as applied to claims 15 and 16 above (to claim 15 in the case of claims 17 and 19; to claim 16 in the case of claims 18 and 20), and further in view of official notice. These claims are essentially parallel to claim 13, and rejected on essentially the same grounds.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Ford" and Osborn as applied to claim 1 above, and further in view of the admitted prior art. "Ford" does not disclose practicing steps (a) – (c) using formulation guidelines or computer models to maintain industry performance credentials of the customized engine oil, but the instant application teaches that there are accepted industry standard practices outlined in codes introduced by industry organizations such as the American Chemistry Council and the Technical Committee of Petroleum Additive Manufacturers in Europe (page 2, lines 13-24). Hence, it would have been obvious to one of ordinary

skill in the art of engine lubrication at the time of applicant's invention to practice (a) – (c) using formulation guidelines or computer models to maintain industry performance credentials of the customized engine oil, for the obvious advantages of benefiting by the accumulated knowledge of the industry, and being able to cite compliance to standard performance credentials as a defense in the event of product liability suits.

Claims 23-32

Claims 23, 24, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klepacki ("Reflect to Mirror Users") in view of Wilkinson ("Understanding What's in Your Car's Motor Oil"), the anonymous article, "Drive Green Tips," and official notice. As per claim 23, Klepacki discloses obtaining a custom product by: (a) using an implement to transmit information from a user to a customized blending facility; and (b) blending a custom product using the information from (a) (two paragraphs beginning from, "Unlike most beauty e-commerce sites," and three paragraphs beginning from, "The degree of customization to be offered"). Klepacki does not disclose that the information is information about a user's motor vehicle type, environment of use, and desired operational characteristics, but Wilkinson teaches selecting an engine oil based on environment of use (the two paragraphs beginning from "What Experts Recommend," and the two paragraphs from "There are still some backyard chemists"), and motor vehicle type (paragraph beginning "Ask any engine engineer at a car company"), while "Drive Green Tips" teaches a motor oil affecting desired operational characteristics (paragraph beginning, "If the Owner's Guide recommends"). Hence, it would have obvious to one of ordinary skill in the art of

electronic at the time of applicant's invention to transmit this information, and to blend an engine oil accordingly, for the obvious advantage of providing a suitable product in accordance with a user's particular needs.

Klepacki does not expressly disclose (c) delivering to, installing, or making available for pickup by a user the custom product from (b), but official notice is taken that it is well known for e-commerce websites to deliver or make available products ordered by users. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to deliver to, install, or make available for pickup by a user the custom engine oil, for the obvious advantage of giving a user reason to participate in the website, and pay for the ordered product.

As **per claim 24**, Klepacki discloses that (a) is practiced using a telephone, computer network, or prepared document; as **per claim 25**, Klepacki discloses that (a) is practiced using a global computer network; and as **per claim 26**, Klepacki discloses electronically displaying a questionnaire on a computer screen connected to a global computer network and prompting a user to input information into the questionnaire (three paragraphs beginning from "The degree of customization to be offered"; the computer screen as such being implied by the Web-based questionnaire).

Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klepacki, Wilkinson, "Drive Green Tips," and official notice applied to claim 23 above, and further in view of Denis et al. (U.S. Patent 4,954,273). As per claim 27, neither Klepacki nor Wilkinson discloses that blending a custom engine oil is practiced to add additives leading to at least two or more enhanced features selected from enhanced

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wear protection, enhanced fuel economy, enhanced detergency, enhanced dispersancy, enhanced low temperature startability, enhanced high temperature viscosity, extended drain capability, enhanced wear protection, corrosion protection, enhanced control of oxidation and enhanced blend stability, but Denis teaches adding additives to enhance two or more of these features (Fully Formed Example III, column 13, lines 46-68). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (b) to add additives leading to at least two or more of the listed enhanced features, for the obvious advantages of producing increased fuel economy, reduced wear, etc.

As per claim 28, likewise, Denis teaches adding additives to enhance three or more of the listed features (Fully Formed Example III, column 13, lines 46-68), making claim 28 obvious on the same grounds as claim 27.

As per claims 29-32, Denis teaches a customized motor oil containing about 86.24 percent of a baseline motor oil, and at least one of a fuel economy additive, an antiwear additive, a detergent additive, a dispersant additive, a corrosion inhibitor, an antioxidant, a pour point depressant, or a blend stability additive (Fully Formed Example III, column 13, lines 46-68). Hence, it would have been obvious to one of ordinary skill in the art of engine lubrication at the time of applicant's invention to practice (c) to provide a baseline motor oil of from about 50, 60, 75, or 80 percent to 99.9 percent of the final customized engine oil, and at least one of the listed additives, for the obvious advantages of producing increased fuel economy, reduced wear, etc.

Response to Arguments

Applicant's arguments filed June 2, 2006 have been fully considered but they are not persuasive. Applicant argues, regarding claims 1 and 2, that none of the references teach or suggest customizing motor oil for an individual consumer. Examiner replies that this is not necessary, since customizing for an individual consumer is not a limitation of claims 1 and 2. The language of claim 1, "design, selection, or customization of a particular motor oil," could be met by selecting a particular off-the-shelf motor oil to meet a customer's needs. Such an off the shelf motor oil would have "recommended or user desired enhancements" as compared to another off-the-shelf motor oil. Applicant further argues that there is no suggestion or motivation to modify the Ford reference to analyze motor vehicle information by computer, since Ford does not address customizing motor oil for an individual consumer. Examiner replies that simply computerizing the information found in the owner guides which the Ford articles recommends that owners check, so that customers could enter their car models and perhaps whether they were driving in hot or cold weather, and receive a motor oil recommendation, would meet the limitations of claim 1.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, on a less trivial reading of claim 1, where actual calculations are performed, taking multiple factors into account, it would have been knowledge generally available to one of ordinary skill in the art that computers are routinely used to perform calculations, with the motivation of sparing human beings from performing difficult or merely tedious and time-consuming mathematical calculations.

Regarding claim 3, Applicant argues that Wilkinson does not teach analyzing data input by computer, or providing a customized motor oil based on such data; Examiner responds that Wilkinson was relied upon for the teaching using different motor oils depending on weather conditions, etc., making it obvious, in view of the other references to input information including at least one of expected ambient temperatures, average driving distance, normal type of driving, and interest in fuel economy, cold weather starting, and engine longevity. It is not requisite that a single reference include all elements of a claim.

Regarding claim 4 and its dependents, Applicant argues against Examiner's rejections based on Klepacki, saying that a limitation is still missing, the consumer's participation in the design of a motor oil based on the consumer's specific lubrication needs. Examiner replies that Klepacki teaches the consumer's participation in the design of other chemical mixtures based on the consumer's lubrication needs, and is therefore analogous art.

Applicant further argues, with regard to claims 8-12 and their dependents, that Denis does not describe a customer participating in the design of a customized motor

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oil, to which Examiner replies that Denis was not relied upon for such participation in design, but for the additives being used in the motor oil. If, based on "Ford," Osborn, and Klepacki, customizing an engine oil is obvious – which granted is a point of disagreement between Applicant and Examiner, then, in view of Denis, the particular additives and enhanced features recited in claims 8-12, 14, 15, 16, 21, and 22 cannot make the customization non-obvious, given the teachings of Denis.

Regarding Applicant's displeasure with Examiner's reliance upon official notice to meet the limitations of some dependent claims, Examiner replies that the takings of official notice were supported by relevant prior art in the previous Office Action. Furthermore, Applicants traversals of official notice were not really adequate (see below for the adequacy of traversal), because Applicant did not and does not state why it would not have been considered common knowledge to display advertising indicia on computer screens, or for the effects of many additives to be dependent on concentration.

The Manual of Patent Examination Procedure (2144.03 (C)) states, in regard to traversal of Official Notice:

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common

knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without reference to the examiner's assertion of official notice would be inadequate.

Regarding claim 23 and its dependents, the issues are essentially similar to those in claim 4 and its dependents (not quite as in claim 1). Granted that Klepacki does not disclose customizing an engine oil, Klepacki does disclose customizing a chemical mixture according to a particular customer's needs, while the secondary references teach selecting an engine oil based on the environment of use, motor vehicle type, etc. Klepacki is thus considered analogous art, making the claimed method obvious. The Denis patent, applied to certain dependent claims, teaches particular additives in engine oils.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached at 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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Nicholas D. Rosen
NICHOLAS D. ROSEN
PRIMARY EXAMINER
August 9, 2006